

Commission's SecretaryOffice of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RE: CG Docket No. 02-278

Ladies and Gentlemen:

BMO Financial Group appreciates the opportunity to comment on the Federal Communications Commission's (the "Commission") Notice of Proposed Rule Making (the "Proposed Rules") for the Telephone Consumer Protection Act (the "TCPA").

BMO Financial Group is a Canadian organization operating in the United States with three foreign banking offices, and under Bankmont Financial Corp., a financial holding company with assets of more than \$35 billion at year-end 2001, 29 banks including Harris Trust and Savings Bank and several non-bank entities, one of which is a registered broker dealer. We offer a wide range of financial services including trust, retail and private banking, and investment services. Our companies have a need to use telemarketing as a means of communicating with consumers about our products and services and, therefore, may be affected by the proposed rules.

The Federal Trade Commission (FTC) Proposed Telemarketing Sales Rules

We strongly encourage the Commission to work closely with the Federal Trade Commission (FTC) on synchronizing a national do-not-call list (the "National List") adopted by either agency. While it is recognized that the FTC may soon issue final regulations regarding a National List, there is still an opportunity for the Commission and the FTC to come to an agreement on the structure and administration of one National List. It is imperative that there only be one National List, thereby reducing the cost and burden to companies when marketing their products and services, and allowing consumers an easy method to register their telephone numbers. With two separate National Lists, consumers may make assumptions regarding the interaction between the two National Lists and whether or not they are required to register on both. For example, without any synchronization, it may be possible that a consumer only registered on the FTC National List may still be called by companies that are only required to use the

Commission National List. Companies that come under the jurisdiction of both the Commission and the FTC may not know which National List to use, or may have to acquire and compare both National Lists, thus adding to the cost of their marketing; costs which would ultimately be passed on to the consumer in the form of higher prices.

It is also important that any National List preempt the lists currently maintained at the state level (collectively, the "State Lists"). State Lists are maintained in different formats, with different timeframes for updating and publishing, different cost structures for registering and subscribing, and different exceptions for when the State Lists must be used. As would be the case with multiple National Lists, companies spend significant resources on ensuring compliance which results in an increased cost of doing business, which is eventually passed on to the consumer in the form of higher prices. Additionally, without a federal preemption of State Lists, consumers will be confused regarding whether or not they need to register with both State Lists and National Lists.

#### Comments on the Proposed Rules

We appreciate the work of the agency in issuing these Proposed Rules. We offer the following comments to reflect our desire that the final regulations maintain the proper balance between the need for consumer privacy and the preservation of effective marketing practices that bring beneficial products and services to consumers.

#### Company Specific Do-Not-Call Lists

The Commission solicits comments on the effectiveness of company-specific-do-not-call lists ("Company Lists") as an approach to providing consumers with a reasonable means to curb unwanted telephone solicitations. In addition, specific comments were sought on the administration of such lists including the maintenance of the lists, honoring of request and record-keeping. A Company List provides a consumer with a specific choice regarding which companies may contact them with information about products and services. In addition to the advantages of maintaining a Company List, as detailed in the Proposed Rules, an additional advantage of a Company List is that t

these

lists are typically maintained by consumer name, not just telephone number.

Therefore, a request to be on a Company List, rather than a State or National List can be honored even if the consumer moves or changes their telephone number.

The Commission seeks comment on whether it is reasonable to require a company to provide a toll-free telephone number and/or a website for consumers to register their name on a Company List. Requiring companies to provide a toll-free number is reasonable. However, we recommend against

requiring companies to provide a website alternative because it would not

provide consumers with an advantage over a toll-free telephone number. Companies are currently incurring significant costs to comply with various

new federal regulations and at this time should not be burdened with the

additional costs of developing a required website.

Comment is also solicited on whether companies should be required to respond affirmatively, or provide confirmations, to requests by consumers

to be added to a Company List. We recommend against requiring companies to

provide confirmations or to respond affirmatively to requests by consumers

to be added to

a Company List. Based upon our experience, this is a complex process to

design and administer without costly automated systems. A confirmation provides little value as it is in the best interests of a company to add a

consumer to their Company List following a request as to avoid annoying and

potentially losing their customer.

Further comment is sought as to whether the Commission should establish a

specific time frame for companies to add consumers to a Company List. We

believe that a specific time frame does not need to be established since it

is in the best interests of an institution to comply as soon as possible.

#### Establishment of a National Do-Not-Call List

The Commission seeks comment on the establishment of a National List as

opposed to the currently required Company Lists. While we believe that Company Lists are effective and provide consumers with the specific choice

and control they need, we would support one National List, co-managed by the Commission and the FTC. As discussed above, this National List would replace all State Lists. Existing State Lists would be incorporated into the National List and the states would discontinue their own State Lists. Companies could be required to purchase the list quarterly or use a third-party service provider, who would subscribe to the list. The National List should also apply to both intrastate and interstate calls.

#### Enforcement and Preemption of State Law

The Commission seeks comment on whether the Commission should clarify whether a consumer may file a lawsuit after receiving one telephone call in violation of the TCPA rules. We strongly urge the Commission not to issue such a clarification and to leave stand the Commission's determination that a consumer may file suit only after receiving more than one telephone call within any 12-month period that violates the TCPA rules. Mistakes can happen, and to allow litigation after one telephone call will lead to unnecessary and costly litigation. If a company makes such a mistake, it has every incentive to fix the mistake in order to avoid litigation. If a company continues to violate the TCPA rules after being notified of the error, a consumer should be allowed to file a lawsuit. Otherwise, the Commission should allow companies the opportunity to correct the error.

The Commission also solicits comment on whether, and if so, to what degree, state requirements should be preempted and whether the preemption would apply to intrastate and interstate telemarketing. We urge the Commission to take the position that federal law should preempt any state law for both interstate and intrastate calls. Like State Lists, each state's telemarketing regulations vary significantly. Federal preemption of state law would provide consistency in the following areas: call time restrictions, use of predictive or autodialers and exceptions to the regulations. Preemption will allow consumers to understand the rules; companies to build effective compliance programs; and consistent enforcement of regulations by a federal agency.

## Wireless Telephone Numbers

The Commission seeks comment on the extent to which telemarketing to wireless consumers exists today and whether companies are including or targeting wireless phone numbers in their telemarketing calls. Specifically, the Commission seeks information on whether companies distinguish between wireless and wireline telephone numbers and if so, how?

It is not our practice to target wireless telephone numbers in our marketing campaigns, however, we are not aware of any reasonable and available method that allows us to identify whether the telephone number being contacted is a wireless number. Therefore, until such methods become available, we recommend that the requirements for calling a wireless telephone number be the same as those for calling a wireline telephone number.

## Time of Day Calling Restrictions

The Commission solicits comment on the effectiveness of existing time of day calling restrictions; the alignment of the restrictions with those imposed under the FTC's Telemarketing Sales Rule (TSR); and whether more restrictive calling times should be adopted if a National List is not established. We recommend against any changes to the existing time of day calling restrictions. The current restrictions are reasonable and should remain. There is also no need to revise the time of day calling restrictions if there is no National List because there is no direct correlation between the two. However, we would support a preemption of any state law that imposes more conservative time of day calling restrictions than those mandated under federal law.

## Best Practices

The Commission solicits comment on industry best practices that would provide a safe-harbor for companies engaged in telemarketing their products and services. We would suggest the following as best practices:

company policies and/or procedures that address maintenance of a Company List; procedures for ensuring compliance with existing telemarketing laws and regulations; employee responsibilities; and telemarketing list requirements, maintenance of a Company List by name and telephone number, honoring of consumer requests as soon as practical, when specifically requested by a consumer, provide a written confirmation

on  
that the consumer's name has been added to the Company List.

#### Conclusion

In conclusion, we appreciate the opportunity to comment on the Commission's Proposed Rules. We hope that these comments help to ensure that any final rules are consistent with the intent of Congress when it passed the Telephone Consumer Protection Act and that these rules can be implemented in harmony with the FTC's proposed rules under the Telemarketing Sales Rule.

If you have any questions concerning this comment letter, or if we may otherwise be of assistance, please do not hesitate to contact us.

Respectfully submitted,

Paul V. Reagan  
Senior Vice President and U.S. General Counsel